IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY THE TWENTY SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.13092 of 1997

Between:
The Management of Indian Oil Corporation
Limited, Tadepalli-522 501, Guntur District

..... PETITIONER

AND
The Presiding Officer, Labour Court,
Guntur and another

.....RESPONDENTS

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.13092 of 1997

ORDER:

Heard the learned counsel on either side.

This writ petition is directed against an award passed by the Labour Court, Guntur in Industrial Dispute No.95/1990 raised by the 2nd respondent herein.

The petitioner is the Indian Oil Corporation, a Government of India undertaking. The 2nd respondent-workman, invoking the provision under Sec.2-A(2) of the Industrial Disputes Act, raised the industrial dispute in question, he was disengaged from service. The 2nd respondent has asserted that he was working as a casual labour in the Maulage section of the Corporation, and while he was working as such, he was subjected for selection against the permanent vacancies on 13.02.1980. He was selected and consequently he was also brought on rolls and allotted Employee Code No.220. On the ground that he suffered a setback in his health and that he was advised by the Civil Assistant Surgeon, Government Hospital at Gudivada to take rest and treatment for Jaundice, he could not attend to his duties, and hence sent a leave letter, enclosing therewith the medical certificate. But when he reported to duty on 01.10.1980, the petitioner management has not

entertained him to duty. The 2nd respondent has asserted that he has been informed orally that his services were terminated on 29.08.1980 itself. The petitioner further stated that he was paid Rs.50/- per day for days' work prior to his disengagement.

To bring home his case, the 2nd respondent has examined himself as W.W.1 and another individual on his behalf as W.W.2. Similarly, the management has examined two witnesses on its side as M.Ws.1 and 2. The 2nd respondent workman has also exhibited 11 documents, marked as Exs.W1 to W11. On behalf of the management, 8 documents have been exhibited, marked as Exs.M1 to M8. The Labour Court had noticed that the 2nd respondent-workman had rendered services as a casual labour between 1977-78 to 1979-80 and that during his tenure of employment, his prompt action of informing the fire office has resulted in saving very valuable properties of the Corporation, and consequently his diligent services have come for appreciation. But the workman has admitted that he stayed away from duty for more than 21 days due to his ill health, as he is ignorant that a casual employee cannot stay away from duty continuously for more than 21 days. The Labour Court has returned a finding that he has been selected, which perhaps might ultimately lead to getting employed on a permanent basis with the petitioner Corporation, but even before such an event, the services came to be terminated.

The Labour Court placing reliance on a decision reported in ***J.C.Mills Ltd. v. Ghan Shyam (M.P., H.C.-G.B.)***[1] came to the conclusion that the order of termination only due to over stayal after expiry of period of leave, without providing any opportunity to the

workman concerned is bad. The Labour Court had also concluded that no domestic enquiry was conducted in terms of the standing orders of the Corporation. Taking the totality of the circumstances into account and also in view of the statement of the 2nd respondent-workman himself that he is getting employed after his termination and consequently he was earning daily wages, passed the award, directing the reinstatement of the petitioner as a casual workman with continuity of service and denied the benefit of back wages. It is this award, which is challenged in this writ petition.

The principal contention canvassed on behalf of the petitioner is that the 2nd respondent-workman could not have invoked the provision under Sec.2-A(2) of the Industrial Disputes Act because the petitioner Corporation is a Government of India owned company and consequently the appropriate Government is the Union Government, and without availing the mechanism provided for under Sec.10 of the Industrial Disputes Act, power could not have been invoked by the 2nd respondent-workman in terms of Sec.2-A(2) of the Industrial Disputes Act and raise an industrial dispute directly. The next contention of the petitioner is that the 2nd respondent-workman took more than 10 years for approaching the Industrial Tribunal, therefore, he should be denied any relief for the sheer delay. Further, it is contended that the termination or disengagement of the workman having taken place prior to introduction of Rule-11(6) of A.P.Industrial Disputes Rules, the entertaining of the industrial dispute by the Labour Court is erroneous. Another contention canvassed on behalf of the petitioner is that since the workman has been engaged only as a casual employee, he has no

right of any manner to stay away from the duties, and as a result of his own conduct he had forfeited his further right of employment with the petitioner Corporation.

In so far as the right of the workman to approach the Labour Court or Industrial Tribunal straight away without having to avail the mechanism provided for in Sec.10 of the Industrial Disputes Act, even if such termination has taken place prior to the introduction of Sec.2-A by the A.P.Act 32 of 1987, is by now well settled. Even though the petitioner/corporation is a Government of India undertaking, the workman need not necessarily invoke the jurisdiction of the Labour Court or Industrial Tribunal, in cases of termination of employment, only upon a reference being made by the Central Government. Useful reference can be had to the judgment of the Supreme Court in the case of ***Ruston & Hornsby v. T.B.Kadam***[2]. As also to the decision of the A.P.High Court reported in ***General Industrial Society Ltd. v. Industrial Tribunal-cum-Labour***[3].

It is noticed that the petitioner Corporation had not denied or disputed the fact that the 2nd respondent-workman had rendered services as a casual employee with it between 1977-78 to1979-80. It does not also dispute or deny as to the fact that the workman has solicited leave to be sanctioned as he had suffered Jaundice and that a Civil Assistant Surgeon, Government Hospital who treated him advised to take rest and to continue medication for Jaundice. What is asserted is that the workman himself by his volition has forfeited the right of employment with the petitioner Corporation. It is altogether a different thing to say that the workman is guilty of misdemeanor of any

misconduct on his part while it is a different thing that the petitioner Corporation had not followed either the procedure prescribed in the Standing Orders of the Corporation for dealing with unauthorized absence from duty by an industrial workman or the basic responsibility of providing an opportunity to the workman concerned to explain his position before the drastic step of terminating his employment or even striking off his name from the approved list of casual workmen is resorted to. If there is any such approved list of casual workmen maintained by the petitioner Corporation, it obviously reflects the Corporation's obligation of engaging them on daily or regular basis. Therefore, deleting the name of an individual from such an approved list is bound to result in drastic or evil consequences, which will disable the workmen to get reengaged by the petitioner Corporation. The Petitioner Corporation has also not explained as to how long the names of the approved candidates would continue on such a list, before the same transforms into a regular employment. Obviously, if the Corporation would bring such men on to regular rolls after considerable length of service is put in by them, by which time the casual workman would have attained the necessary degree of skill to perform the duties and responsibilities satisfactorily with the Corporation, then striking off the name from an approved list, is resulting in evil and bad consequences to the detriment of the workman. Then the petitioner Corporation cannot avoid it's obligation to comply with the procedural requirement spelt out in the approved standing orders and even if there are no such standing orders, the petitioner/corporation is duly bound to follow the basic principle of natural justice and provide an opportunity for the workman to explain his position. If the workman is down and out with a disease like

Jaundice, which takes a little longer time to be cured of, which forces him to stay away from duty, an opportunity if provided would have enabled the workman to mitigate the hardship. The petitioner/corporation has not followed these basic principles before it struck off the name of the petitioner from the approved list, is not called in dispute at all. In the absence of any such material on record, it will be difficult to characterize the finding recorded by the Tribunal as either perverse or unreasonable.

The principle enunciated by the Supreme Court in ***D.K.Yadav v. J.M.A.Industries Ltd.***[4] is to the following effect:

> "It is, thus, well-settled law that right to life enshrined under Art.21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependants. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice."

The view taken by the Labour Court passed on the judgments in ***J.C.Mills Ltd. v. Ghan Shyam (M.P., H.C.-G.B.)*** (1 supra) and in ***D.K.Yadav v. J.M.A.Industries Ltd.*** (4 supra) cannot also be termed as bad. The Labour Court had denied the benefit of back wages to the workman, obviously taking note of the fact that he had invoked the provision to approach the LabourCourt straight away after considerable length of time. In exercise of the *Certiorari* jurisdiction, I do not find any circumstance warranting interference with the award passed by the Labour Court.

Accordingly, the Writ Petition is dismissed. But, however, without

costs.

NOOTY RAMAMOHANA RAO,J

Dated:27.11.2007
Dsr

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[1] FLR 1995 (71) - 198
[2] (1976) 3 SCC 71
[3] (1997) 1 LLJ 15 (AP)
[4] 1993 – II L.L.N.575